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10 *Attorneys for Plaintiff*

11  
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF COCHISE**

14  
15 BRIGHTHOUSE LIFE INSURANCE  
16 COMPANY, a Delaware Corporation,

17 Plaintiff,  
18 v.

19 VICTOR PRODUCE OF NEW MEXICO,  
20 INC., a New Mexico Corporation;  
21 VICTOR PRODUCE, INC., a California  
22 Corporation; JIMMY L. VICTOR and  
23 CHRISTINA J. VICTOR, as Co-Trustees  
24 of the J. & C. VICTOR 2006 TRUST,  
25 U/T/A DATED NOVEMBER 26, 2006,

26 Defendants.

NO.

**VERIFIED COMPLAINT AND  
APPLICATION FOR  
APPOINTMENT OF A RECEIVER**

27  
28 Brighthouse Life Insurance Company (“Lender”), through its undersigned  
29  
30 counsel, for its Complaint against Defendants, states and alleges as follows:

31  
32 **PARTIES**

33  
34 1. Lender is a Delaware corporation with its principal place of business in  
35 Charlotte, North Carolina.

1       2.     Victor Produce of New Mexico, Inc. (“**Victor Produce NM**”) is a New  
2 Mexico corporation with its principal place of business in New Mexico and operations in  
3 Arizona.

4       3.     Victor Produce, Inc. (“**Victor Produce**”) is a California corporation with its  
5 principal place of business in New Mexico and operations in Arizona.

6       4.       The J. & C. Victor 2006 Trust, u/t/a dated November 26, 2006 (“Victor  
7 Trust,” and collectively with Victor Produce NM, Victor Produce, “**Borrowers**”) is a  
8 revocable trust, the co-trustees of which are Jimmy L. Victor and Christina J. Victor.

9       5. The real property, together with any buildings, structures, improvements,  
10 furniture, fixtures, equipment, leases, and personal property pertaining to or affixed  
11 thereon (hereinafter, the “**Property**”) that is the subject of this action is located in Cochise  
12 County, Arizona and is more particularly identified in the attached **Exhibit A**, which is  
13 incorporated herein by this reference.

## **JURISDICTION AND VENUE**

15       6.      The Court has jurisdiction over the subject matter of this action pursuant to  
16 the Arizona Constitution and A.R.S. § 12-123.

17       7.     The Court has personal jurisdiction over Borrowers because they own real  
18 property in the State of Arizona, are doing business and/or have caused events to occur in  
19 the State of Arizona, and the Property at issue herein is located in Cochise County,  
20 Arizona.

21       8.     This action is brought under A.R.S. §§ 12-1241 and 33-702(B) and Rule 66,  
22     Arizona Rules of Civil Procedure.

23 9. Venue in Cochise County is proper pursuant to A.R.S. § 12-401.

## THE LOANS

10. On or about May 17, 2018, Lender made a (1) \$11,000,000.00 loan (the “Term Loan”) and (2) \$9,000,000.00 loan (the “LOC Loan”) (collectively, the “Loans”) to Borrowers and to Jimmy L. and Christina J. Victor, individually (the “Victors”).<sup>1</sup>

11. In connection with the Loans, Borrowers, the Victors and Lender entered into that certain Loan Agreement, dated as of May 17, 2018, by and among Borrowers, the Victors and Lender (as at any time amended, the “**Loan Agreement**”). A true and correct copy of the Loan Agreement is attached hereto as **Exhibit B** and incorporated herein by reference.

12. Also in connection with the Loans and Loan Agreement, Borrowers and the Victors signed and delivered to Lender (1) that certain Term Loan Promissory Note, dated as of May 17, 2018, executed by Borrowers and the Victors in favor of Lender, in the original principal amount of \$11,000,000.00 (as at any time amended, the “**Term Loan Note**”) and (2) that certain Line of Credit Promissory Note, dated as of May 17, 2018, executed by Borrowers in favor of Lender, in the original principal amount of \$9,000,000.00 (as at any time amended, the “**LOC Note**,” and collectively with the Term Loan Note, the “**Notes**”). A true and correct copy of the Term Loan Note is attached hereto as **Exhibit C** and incorporated herein by reference; a true and correct copy of the LOC Note is attached hereto as **Exhibit D** and incorporated herein by reference.

13. As security for the Loans and Notes, Borrowers executed, among other things, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of May 17, 2018 (as at any time amended, the "**Deed of Trust**"), and recorded in the Cochise County records on May 17, 2018, as Instrument No. 2018-09209, pursuant to which Borrowers granted to Lender a first priority lien on certain real property

<sup>1</sup> The Victors are not named parties in this action because they are not owners of the Property nor are they parties to the Deed of Trust.

1 located in Cochise County, Arizona, and a first priority security interest in all of  
2 Borrowers' personal property, both tangible and intangible, used in connection therewith  
3 (all of the foregoing real property, improvements, and personal property, as more  
4 particularly described in the Deed of Trust, being referred to herein collectively as the  
5 "Property"). A true and correct copy of the Deed of Trust is attached hereto as **Exhibit E**  
6 and incorporated herein by reference.

7 14. The Property includes a pecan farm located in Cochise County, Arizona.<sup>2</sup>

8 15. The Loan Agreement, Notes, Deed of Trust and all other documents further  
9 evidencing, securing, or executed in connection with the Loan, together with any  
10 modifications of any of the foregoing, are collectively referred to herein as the "Loan  
11 Documents."

12 16. Lender is the current holder and owner of the Loan and Loan Documents.

#### 13 THE LOAN DEFAULTS

14 17. Under the terms of the Loan Documents, Borrowers and the Victors are  
15 required to, among other things, make scheduled payments of debt service. Borrowers  
16 and the Victors have failed to make the scheduled payments of debt service for July 2019.

17 18. Under the terms of the Loan Documents, an "Event of Default" occurs if  
18 Borrowers and the Victors fail to make any payment required under the Loan Documents  
19 on or before the date when due. An Event of Default has occurred under the Loan  
20 Documents by virtue of Borrowers' and the Victors' failure to make scheduled payments  
21 of debt service as and when required by the Loan Documents.

22 19. On or about July 17, 2019, Lender provided notice to Borrowers and the  
23 Victors of Borrowers' and the Victors' default due to their failure to make the July 2019  
24 debt service payments, and demand was made for the immediate payment of all delinquent

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25 <sup>2</sup> The Property is part of a larger operating pecan farm that includes property in adjacent Hidalgo County, New  
26 Mexico (the "New Mexico Property").

1 amounts (the “Default Letter”). A true and correct copy of the Default Letter is attached  
2 hereto as **Exhibit F** and incorporated herein by reference.

3 20. Borrowers and the Victors failed to cure as demanded in the Default Letter.

4 21. On August 29, 2019, Lender provided notice to Borrowers and the Victors of  
5 their continuing defaults under the Loan Documents and of Lender’s acceleration of the  
6 indebtedness due and owing under the Notes and other Loan Documents, and demanded  
7 immediate payment of all amounts due and owing under the Loan Documents, including  
8 unpaid principal, interest, Prepayment Premiums and all other amounts (the “Acceleration  
9 Letter”). A true and correct copy of the Acceleration Letter is attached hereto as **Exhibit**  
10 **G** and incorporated herein by reference.

11 22. As of August 28, 2019, the following amounts were due and owing to  
12 Lender by Borrowers under the Loan Documents with respect to the Term Loan: principal  
13 in the amount of \$11,000,000.00; interest in the amount of \$377,330.56; interest after  
14 August 28, 2019, in the per diem amount of \$5,018.44; late charges in the amount of  
15 \$6,866.44; Prepayment Premium in the amount of \$477,555.11; attorneys’ fees and  
16 expenses incurred up to August 28, 2019, and thereafter; and all fees and costs incurred by  
17 Lender in connection with the enforcement of the Loan Documents or in connection with  
18 the protection of the Property.

19 23. As of August 28, 2019, the following amounts were due and owing to  
20 Lender by Borrowers under the Loan Documents with respect to the LOC Loan: principal  
21 in the amount of \$9,000,000.00; interest in the amount of \$191,600.92.00; interest after  
22 August 28, 2019, in the per diem amount of \$4,054.47; late charges in the amount of  
23 \$2,887.17; attorneys’ fees and expenses incurred up to August 28, 2019, and thereafter;  
24 and all fees and costs incurred by Lender in connection with the enforcement of the Loan  
25 Documents or in connection with the protection of the Property.

24. As a result of Borrowers' defaults, Lender is in the process of initiating a non-judicial foreclosure of the Property in accordance with Arizona law.

## **REMEDIES**

25. The Loan Documents set forth the non-exclusive remedies that Lender is entitled to exercise as a matter of right in the event of default. These remedies include the right to have a receiver appointed over the Property.

26. In addition, A.R.S. § 33-702(B) states that when, as here, a deed of trust provides for an assignment of rents, issues and profits from the real property and improvements covered by the deed of trust, and a default has occurred under the terms of the deed of trust, the assignment may be enforced by the appointment of a receiver to take possession of the real property and improvements and to collect all rents, issues and profits of the real property and improvements.

## **FIRST CLAIM FOR RELIEF**

## (Appointment of Receiver)

27. Lender hereby incorporates each and every allegation contained in the previous paragraphs of this Complaint as though fully set forth herein.

28. The Loan Documents grant to Lender, as beneficiary, the absolute right to collect and apply all rents, issues, income and profits derived from the Property to the discharge of the indebtedness that Borrowers and the Victors owe to Lender under the Loan Documents.

29. The Loan Documents also grant to Lender the right to seek the appointment of a receiver for the Property. Under Section 8.02(b) of the Deed of Trust, upon the occurrence of an Event of Default, Borrowers agreed that:

Trustee or Beneficiary may, to the extent permitted by Applicable Law, make an ex parte application to any court of competent jurisdiction, and obtain appointment of, a receiver, trustee, liquidator or conservator of the Property, without notice, without giving bond, and without regard for the

1 adequacy of the security for the Secured Obligations and without regard for  
2 the solvency of Grantor, any guarantor, or of any Person liable for the  
3 payment of the Secured Obligations. TRUSTOR HEREBY WAIVES  
4 NOTICE OF THE APPLICATION FOR, AND CONSENTS TO THE  
5 APPOINTMENT OF A RECEIVER, TRUSTEE, LIQUIDATOR OR  
6 CONSERVATOR OF THE PROPERTY IN ACCORDANCE WITH THE  
7 PROVISIONS OF THIS SECTION; AND AGREES TO NOT OPPOSE  
8 SUCH APPOINTMENT.

9 (emphasis in original)

10 30. It is impractical and impossible for Lender to enjoy the rights granted to it  
11 under the Loan Documents and applicable Arizona law without the appointment of a  
12 receiver with the power and authority to take possession of, manage and protect the  
13 Property.

14 31. Accordingly, Lender requests the Court to enter an Order appointing a  
15 receiver, which Order provides the receiver with all appropriate powers and duties, and  
16 which Order requires Borrowers and any officers, directors, general partners, members,  
17 agents, property managers, architects, contractors, subcontractors and employees, and all  
18 other persons with actual or constructive knowledge of the Order and their agents and  
19 employees (except Lender) to, among other things, turn over or otherwise make available  
20 to the receiver:<sup>3</sup>

21 a. the possession and control of the Property and, to the extent not  
22 already within the control of a duly-appointed receiver for the New Mexico Property, the  
23 records, books of account, ledgers, budgets and all business records thereof (including,  
24 without limitation, the plans, specifications and drawings relating or pertaining to any part  
25 or all of the Property), excluding any records or documents subject to any applicable  
26 privilege, wherever located and in whatever mode maintained (including, without

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25 <sup>3</sup> Lender has sought the appointment of a receiver with similar powers for the adjacent and related New Mexico  
26 Property.

1 limitation, information contained on computers and any and all software relating thereto  
2 as well as all banking records, statements and canceled checks);

3 b. to the extent not already within the control of a duly-appointed  
4 receiver for the New Mexico Property, all documents that constitute or pertain to all  
5 licenses, permits or governmental approvals relating to the Property;

6 c. to the extent not already within the control of a duly-appointed  
7 receiver for the New Mexico Property, all construction contracts, leases and subleases,  
8 rental agreements, management agreements, franchise agreements, royalty agreements,  
9 licenses, assignments or other agreements of any kind whatsoever, whether currently in  
10 effect or lapsed, that relate to or are related to any part or all of the Property;

11 d. to the extent not already within the control of a duly-appointed  
12 receiver for the New Mexico Property, all documents pertaining to past, present or future  
13 construction of any type with respect to all or any part of the Property;

14 e. to the extent not already within the control of a duly-appointed  
15 receiver for the New Mexico Property, all documents of any kind pertaining to any and  
16 all toxic chemicals or hazardous materials, if any, ever brought, used and/or remaining  
17 upon the Property, including, without limitation, any and all reports, surveys, inspections,  
18 checklists, proposals, orders, citations, fines, warnings and notices; and

19 f. to the extent not already within the control of a duly-appointed  
20 receiver for the New Mexico Property, all accounts, including bank accounts, security  
21 deposit accounts and operating accounts, rents, issues, income and profits derived from  
22 the Property (including, without limitation, all security deposits, advances and prepaid  
23 rents, storage fees, parking fees, lease payments, merchandise sale proceeds, lease  
24 termination fees, proceeds from any settlements of lease obligations, and other income  
25 thereof) (collectively, the **“Rents and Profits”**).

1           32. The Order appointing a receiver also should prevent Borrowers and their  
2 members, managers, agents, successors, assignees, employees, or representatives,  
3 including the Victors, from:

4           a. interfering with the receiver, directly or indirectly, in the management  
5 and operation of the Property, and in the collection of the Rents and Profits;

6           b. collecting or attempting to collect the Rents and Profits or directing  
7 any person or entity to collect or attempt to collect the Rents and Profits, unless expressly  
8 authorized by the receiver in writing;

9           c. expending, disbursing, transferring, assigning, selling, conveying,  
10 devising, pledging, mortgaging, creating a security interest in or disposing of the whole  
11 or any part of the Property (including the Rents and Profits thereof), without the prior  
12 written consent of Lender; provided, however, that nothing contained in this Order shall  
13 prohibit or restrain Lender from initiating and/or completing a sale by judicial or  
14 nonjudicial foreclosure of the Property, or any portion thereof, and thereafter taking title  
15 and possession thereto for itself or its designee; and

16           d. doing any act that will, or that will tend to, impair, defeat, divert,  
17 prevent or prejudice the preservation of the Property (including the Rents and Profits  
18 thereof) or Lender's interest in the Property and said Rents and Profits.

19           33. Pursuant to the Loan Documents and A.R.S. § 12-341.01, Lender is entitled  
20 to recover its attorneys' fees and costs incurred herein.

21           **WHEREFORE**, Lender respectfully requests the Court to enter an Order:  
22 appointing a receiver with the authority and duty to, among other things:

23           1. take possession of the Property to manage, conserve, operate and  
24 protect it, pending a trustee's sale under the Deed of Trust;

25           2. employ any person or firm or agent to manage, operate, or maintain  
26 the Property if the receiver deems it necessary or appropriate to do so;

1                   3. take such other actions as may be necessary or incidental to the  
2 foregoing specific powers, directions, and general authorities relating to the Property;

3                   4. decreeing that Borrowers and their respective officers, directors,  
4 general and limited partners, agents, property managers, architects, contractors,  
5 subcontractors and employees, including the Victors, and all other persons with actual or  
6 constructive knowledge of said Order and their agents and employees, except Lender,  
7 shall take such actions and turn over documents to the receiver in accordance with the  
8 provisions set forth hereinabove, and incorporated by reference herein, and shall not  
9 interfere with the receiver, directly or indirectly, in the management and operation of the  
10 Property;

11                  5. awarding Lender its reasonable attorneys' fees and costs incurred  
12 herein; and

13                  6. awarding such other and further relief as the Court may deem just and  
14 proper.

15                  RESPECTFULLY SUBMITTED this 7 day of October, 2019.  
16  
17  
18

19                  POLSINELLI PC  
20                  One East Washington Street  
21                  Suite 1200  
22                  Phoenix, Arizona 85004-2568  
23                  Attorneys for Plaintiff

24                  By \_\_\_\_\_

25                  John S. Craiger  
26

## VERIFICATION

STATE OF KANSAS }  
COUNTY OF JOHNSON } SS.

5 Douglas A. Gibson, being first duly sworn upon his oath, deposes and says that he  
6 is an Authorized Signatory and Director of Agricultural Finance for MetLife Investment  
7 Management, LLC, the Investment Manager for Brighthouse Life Insurance Company and  
8 that he is duly authorized to sign this Verification on behalf of Lender; that he has read the  
9 foregoing Verified Complaint and Application for Appointment of a Receiver and knows  
10 the contents thereof; and that the information contained therein is true and accurate to the  
11 best of his knowledge, information, and belief.

12 DATED this 4<sup>th</sup> day of October, 2019.

October, 2019.

16 STATE OF KANSAS )  
17 )ss.  
18 COUNTY OF JOHNSON )

19 On this 4<sup>th</sup> day of October, 2019, before me personally appeared Douglas A.  
20 Gibson, to me known to be the person described herein and who executed the foregoing  
instrument, and acknowledged that he executed the same as his free act and deed.

21 In Testimony Whereof, I have hereunto set my hand and affixed my official seal the  
22 day and year first above written. 

24 My Commission Expires:

08|26|2021

Robert L Black  
NOTARY PUBLIC

